



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/174,868	10/19/98	MUSACCHIA	J 14359-016

QM12/0801

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EXAMINER

CEGIELNIK, U

ART UNIT	PAPER NUMBER
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3712

DATE MAILED:

08/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/174,868

Applicant(s)

Musacchia

Examiner

Urszula M. Cegielnik

Group Art Unit

3712

☐ Responsive to communication(s) filed on \_\_\_\_\_.

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

On page 6, lines 29-32, the specification discloses that the call device is of unitary construction. The disclosure goes on to list the components that make up the call device. But, it does not teach what constitutes a unitary construction. Further, the drawings appear show the platform portion 31 made of a rigid material and the body attachment assembly 76 having a flexible element 80 that passes through the slot 84 of platform portion 31. It is not understood how the platform portion 31 and the flexible element 80, which are made of two different materials, be considered a unitary construction.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner does not fully understand the metes and bounds of claim 1 as currently drafted. The claim appears to state that both the game call portion along with the body attachment assembly **as a whole** is of unitary construction.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowes.

Bowes discloses a game call portion having a sound emanating surface; a body attachment assembly to releasably attach the device to the body of the user, and the game call portion and the body attachment assembly being of unitary construction; a platform portion 40; the platform portion having legs 44, and a strap 38.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in the this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes in view of Legursky. Bowes discloses all the features of the instant claimed invention except for the platform portion being rectangular. Legursky teaches a game call device with a rectangular platform. It would have been obvious to one of ordinary skill in the art to modify the device of Bowes in view of Legursky to have a rectangular platform portion. This make the device more comfortable to wear with the platform portion being lengthwise aligned with the body portion, so it won't snag on an object when a person is moving.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes in view of Official Notice hereby taken that buckles are well known devices for attaching the ends of straps together. Bowes discloses all the features of the instant claimed invention, including a strap. However, Bowes does not disclose a buckle on the strap. It would have been obvious to one of ordinary skill in the art in view of the official notice above, to modify the device of Bowes, so that the strap of Bowes is provided with a buckle for the purpose for facilitating the adjustment of the length of the strap.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes. Bowes discloses all the features of the instant claimed invention except for the striker having a tether; the tether having opposing ends; one of the opposing ends attached to the striker and the other of opposing ends attached to the platform portion. It would have been obvious to one of ordinary

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skill in the art to modify the device of Bowes to provide it with a tether as claimed for the purpose of aiding in the portability of the device.

11. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musacchia (US Pat No. 5,607,091). Musacchia teaches a hunting device that is composed of a game call portion 30 where sounds are produced, the game call portion 30 having a sound emanating surface 32, a body attachment assembly 76 to releasably attach the device to the body of a user of the device. He also discloses the hunting device as having an elevating means to elevate sound emanating surface 32 of the game call portion 30 away from the surface 34 of the body of the user. The elevating means has legs each having a first end and a second end. First end of legs 14, 16 are attached to game call portion 30, and the second end of the legs are in contact with the body limb 34 by body attachment assembly 76, as shown in Figure 1. The elevating means is composed of a platform portion 12 having a top surface 26 and a bottom surface 28, platform portion 12 supporting game call portion 30. The platform portion 12 is rectangular and includes front and rear legs 14, 16 extending from bottom surface 28 of platform portion 12. As shown in Figure 1, body attachment assembly 76 is encircable about a limb 34 of the user's body to releasably secure the device against the body of the user, where legs 14, 16 elevate sound emanating surface 32 of game call portion 30 from body limb 34. Also shown is body attachment assembly 76 carried by platform portion 12; having an elongated flexible element 78 having one end 80 connected to platform portion 12, an opposite free end on flexible element 78 provided with hook 90; a receiving formation includes slot 86 in platform portion 12 of the device. The

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elongated flexible element is composed of a strap 78 with buckle 88 allowing for adjustment of the length of strap 78. The hunting device has a flexible tether 72 having opposing ends, and a striker 64. Opposing ends of tether 72 are attached to striker 64 and platform portion 12 of the device.

Musacchia does not disclose a hunting device for producing sounds that has a unitary construction.

The unitary construction of the hunting device would have been obvious to one of ordinary skill in the art, since this would aid in the portability and usage of the device.

### *Response to Arguments*

12. Applicant's arguments filed 2 February 2000 have been fully considered but they are not persuasive.

Applicant states that the Musacchia (US Pat. No. 5,607,091) reference discloses a game call holder rather than a game call device. The examiner acknowledges that fact. However, the game call holder is disclosed to be used along with a game call as explained in the disclosure, and shown in the drawings. Furthermore, the examiner may make use of any part of reference to support his/her rejection, and is not limited only to the claimed invention. The drawings clearly would lead to one of ordinary skill in the art to modify the separate game call portion and the holder of Musacchia to make it unitary of for the purpose reducing manufacturing costs.

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13. The affidavit has been fully considered by the examiner, but does not overcome the rejection for the following reasons.

The applicant has provided little objective evidence in the affidavit to account for long-felt need which must be recognized, persistent, and not solved by others. Applicant states the present game call device was developed after noting several complaints by others to the disadvantages of separate game call and holding device. However, no documented evidence was submitted to indicate that fact. Applicant acknowledges that the long-felt need must be a persistent one. Again, no written proof was provided to support the requirement of persistency. Furthermore, applicant presented in the affidavit the disadvantages of a separate game call and holder. Again, no data was offered to support this position. Applicant seems to state that he understands the requirements of the affidavit claiming long-felt need, but did not fully meet those requirements.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness as set forth in the rejection under 35 U.S.C. 103(a). Accordingly, the rejection is repeated herein.

### *Conclusion*

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action (see below). The amendment to sub-part (b) of claim 1 presents a new issue since only a portion of that amendment was previously incorporated into the claim, and then only as part of the claim preamble, not a structural limitation. Accordingly, **THIS ACTION IS MADE FINAL.**



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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

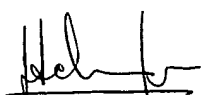
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula Cegielnik whose telephone number is (703) 306-5806. The examiner can normally be reached Monday through Friday from 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacob Ackun, can be reached on (703) 308-3867. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Urszula M. Cegielnik

Assistant Examiner

  
Jacob K. Ackun  
Primary Examiner